UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ILLINOIS

In Re	)	In Bankruptcy
	)	
DEBRA A. DICKERSON	)	No. 96-30378
	)	
Debtor.	)	
	)	
JUNE E. HALLORAN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adversary No. 96-3126
	)	
DEBRA A. DICKERSON,	)	
	)	
Defendant.	)	

O P I N I O N

Before the Court is Plaintiff's Amended Complaint to Determine Dischargeability of Debt pursuant to § 523 (a) (6) of the Bankruptcy Code.

The following facts are undisputed: In July, 1993, Debtor lived with her boyfriend (now husband) James A. Dickerson III. On the morning of July 27, 1993, Mr. Dickerson drove Debtor to work; Debtor then allowed Mr. Dickerson to use her 1988 Ford Ranger truck until she finished work that day (a double shift), at which time he was to return to pick her up. Approximately 15 hours after Debtor entrusted Mr. Dickerson with her truck, Mr. Dickerson crossed the center line on U.S. Route 67, striking an automobile driven by Plaintiff's decedent and John W. Halloran, fatally injuring him. Mr. Dickerson had been drinking at the time of the accident. Although Debtor knew that Mr. Dickerson drank alcohol, Mr. Dickerson had not been drinking and was not intoxicated at the time she entrusted him with her truck on July 27, 1993.

In dispute is whether Debtor knew on July 27, 1993, the following facts: (i) that Mr. Dickerson had previously driven vehicles while under the influence of alcohol, (ii) that Mr. Dickerson had a previous conviction for driving under the influence of alcohol, (iii) that Mr. Dickerson had a history or dangerous and reckless driving, (iv) that Mr. Dickerson did not have a valid driver's license on the date of

the accident, and (v) that Mr. Dickerson abused alcohol.

Plaintiff filed a six-count wrongful death civil suit in Madison County, Illinois against Debtor and Mr. Dickerson. Following a trial, the jury was instructed in part as follows:

> When I use the expression "willful and wanton conduct", I mean a course of action which shows an utter indifference to or conscious disregard for the safety of others. Plaintiff's Instruction No. 15.
>
> The plaintiff has the burden of proving each of the following propositions in Count VI (willful and wanton count) of her complaint:
>
> First, that the (Debtor) acted or failed to act in one of the ways claimed by the plaintiff as stated to you in these instructions and that in so acting, or failing to act, the (Debtor) was willful and wanton;
>
> Second, that (the decedent) died;
>
> Third, that the willful and wanton conduct of (Debtor) was the proximate cause of the death of (the decedent). Plaintiff's Instruction No. 21.

The jury rendered a verdict in favor of Plaintiff and against both Debtor and Mr. Dickerson for $2.5 million. The Verdict Form C, admitted here into evidence, states that the jury found Debtor to be 15% at fault and Mr. Dickerson to be 85% at fault, and damages were apportioned accordingly. Debtor subsequently filed her Chapter 7 bankruptcy petition; Plaintiff filed this adversary proceeding alleging that the debt is nondischargeable under 11 U.S.C. § 523(a)(6).

The parties agreed to offer the trial transcript of the state court proceeding into evidence before this Court in lieu of live testimony from those witnesses who appeared at the state court trial. Plaintiff asserts that the jury's finding of "willful and wanton conduct" is a sufficient basis for a finding of nondischargeability under § 523(a)(6). Debtor argues that the elements required for a finding of nondischargeability under § 523(a)(6) are different from the "willful and wanton" standard, which was the basis of the jury's verdict.

While the issue of dischargeability is ultimately to be determined by the Bankruptcy Court (*see* Brown v. Felsen, 442 U.S. 127 (1979)), the doctrine of collateral estoppel would prevent relitigation of the issues previously decided by the state court if (i) the state court, in determining certain issues, utilized standards identical to those in the Bankruptcy Code, and (ii) the criteria necessary for collateral estoppel

to apply were satisfied. In re Roemer, 76 B.R. 126, 128 (Bankr. S.D. Ill. 1987) Thus, the question for determination is whether the finding by the jury that Debtor engaged in "willful and wanton conduct" constitutes an identical standard to that required by § 523(a)(6).

Judge Myers addressed the issue of whether the same standards apply under Illinois tort law and § 523 (a) (6) for conduct that is willful and malicious" or willful and wanton" in In re Roemer, supra. After comparing the case construing "willful and malicious" under § 523 (a) (6) with the Illinois pattern jury instruction defining "willful and wanton", Judge Myers concluded as follows:

> It appears that willful and malicious conduct is more broadly defined under Illinois law, and that it includes conduct which is not necessarily deliberate or intentional. Therefore, . . . collateral estoppel would not apply since the standard for determining whether conduct is willful and malicious under Illinois law is not the same standard under section 523(a)(6) of the Bankruptcy Code.

In re Roemer, supra, 76 B.R. at 128-129. Because the doctrine of collateral estoppel is not applicable to this case, the Court must review the trial transcript to determine whether the Debtor's action constitutes willful and malicious conduct as that term is used in § 523(a)(6).

Section 523(a)(6) of the Bankruptcy Code states in part as follows:

> A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt . . . for willful and malicious injury by the debtor to another entity. . . .

11 U.S.C. § 523 (a) (6).

Courts addressing the question are divided as to the meaning of "willful" and "malicious" within the context of § 523 (a) (6). "Much of the struggle has centered on the degree to which an intent to harm or the inevitability of harm is a component of one or both words." In re Knapp, 179 B.R. 106, 108 (Bankr. S.D. Ill. 1995) (citations omitted).

In In re Scarlata, 979 F.2d 521 (7th Cir. 1992), the Court of Appeals for the Seventh Circuit upheld the decisions of the lower courts finding that a debtor's conduct was not malicious because it would not "automatically or necessarily" injure the plaintiff. Id. at 526-528. The Seventh Circuit has since adopted a liberal definition of malice:

> We give effect to the words of the statute by viewing their plain meaning. "Under Section 523 (a) (6) of the Bankruptcy Code, willful means deliberate or intentional . . . [and] [m]alicious means in conscious disregard of one's duties or without just cause or excuse; it does not require ill-will or specific intent to do harm.,"

Matter of Thirtyacre, 36 F.3d 697, 700 (7th Cir. 1994) *quoting* Wheeler v. Laudani, 783 F.2d 610, 615 (6th Cir. 1986) (citations omitted). In adopting this definition of malice, the court rejected the stricter standard requiring a specific intent to do harm. However, the court left unanswered the question of whether malice or willfulness requires that the act "automatically or necessarily" cause injury.

Under the Seventh Circuit's definition of "willful", a plaintiff must show that a defendant acted deliberately and intentionally. Matter of Thirtyacre, 26 F.3d at 700. The intent required is intent to do the act at issue, not intent to injure the victim. In re Britton, 950 F.2d 602, 605 (9th Cir. 1991).

It is clear that Debtor's entrustment of her vehicle to Mr. Dickerson was deliberate and intentional and, therefore, willful. However, in order to find malice, the act in question must necessarily lead to or be substantially certain to cause harm. In re Pourdas, 1997 WL 142253 at 3 (Bankr. S.D. Ill. 1997) *citing* In re Staggs, 177 B.R. 92, 96 (N.D. Ind. 1995) ("malicious" means a wrongful act done without just cause or excuse which necessarily produces harm); In re Kemmerer, 156 B.R. 806, 809 (Bankr. S.D. Ind. 1993) ("malicious" means a wrongful act done without just cause or excuse which is substantially certain to cause harm to another or another's property).

It is clear, based upon the instructions given to the jury and the verdict, that the jury found that Debtor acted with reckless disregard to Plaintiff's decedent's rights when she loaned Mr. Dickerson her truck on that fateful day in July, 1993, and this Court does not necessarily disagree with that finding. However, even if all disputed facts are viewed in the light most favorable to Plaintiff, Debtor's conduct cannot be deemed "malicious" because the impending harm to Mr. Halloran was not substantially certain, nor even probable, to follow from Debtor's acts. A superseding event, that being Mr. Dickerson's voluntary intoxication followed by his decision to get behind the wheel of Debtor's truck, caused the accident which killed Plaintiff's decedent, not the negligent or reckless entrustment of the truck to Mr. Dickerson by Debtor. This finding is supported by the jury's Verdict Form C which attributes 85% of the

"fault that was the proximate cause of the death" of Plaintiff's decedent to Mr. Dickerson and only 15% of the fault to Debtor.

The facts in this case, even when viewed in a light most favorable to Plaintiff, do not support a finding of "willful and malicious" conduct on Debtor's part as required by § 523 (a) (6). Therefore, the debt which is the subject of this adversary proceeding is dischargeable in Debtor's bankruptcy.

For the reasons set forth above, the Court finds for the Debtor/Defendant and against the Plaintiff on the Amended Complaint to Determine Dischargeability of Debt.

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

ENTERED: April 21, 1997

/s/ LARRY LESSEN
UNITED STATES BANKRUPTCY JUDGE